U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17164151

Date: OCT. 05, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a finance executive, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that while she qualified as a member of the professions holding an advanced degree, the record did not establish that she was eligible for or otherwise merited a national interest waiver.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the

sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884. *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[1]

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

[1] To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing their expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines ·'exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute. individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, they must go beyond demonstrating a degree of expertise significantly above that ordinarily encountered in their field of expertise to establish eligibility for a national interest waiver. *See Dhanasar,* 26 I&N Dec. at 886 n.3.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

The Petitioner is a finance executive in the oil and gas industry, and has been employed by companies in the [redacted] in the United States and abroad for more than 15 years. She states that her proposed endeavor is to advance the US oil and gas industry through her expertise in finance management.

The record shows that the Petitioner earned a degree in public accounting from the University of [redacted] in 1998, and includes several reference letters from her former and current colleagues describing her experience with [redacted] The Director determined that her degree was the foreign equivalent of a United States baccalaureate degree in accounting, and that the letters verified that she possesses at least five years of progressive, post-baccalaureate experience in her field. Therefore, because the Petitioner has established her eligibility for the underlying EB-2 immigrant visa classification, the sole issue on appeal is whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest.

In his decision, the Director concluded that while the Petitioner had established that her proposed endeavor had substantial merit, she had not shown that it was of national importance, as its impact would affect only her employer and not the broader oil and gas industry. On appeal, the Petitioner asserts that the impact of her work would not be limited to her employer, and that it would have significant potential to employ U.S. workers or have other substantial positive economic effects. She also asserts that she is well-positioned to advance her endeavor, and that her work benefits the U.S. even considering the availability of other qualified workers. After reviewing the record, we agree with the Director's conclusion that the Petitioner does not merit a national interest waiver.

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated on Form I-140 that her proposed endeavor is to "deliver financial solutions in the oil and gas industry." In her personal statement, submitted in response to the Director's request for evidence, she elaborated on this, noting that in her current position with [redacted] "personally shape[s] and drive[s] the completion of complex commercial transactions that help unlock additional value and continue to impact the energy landscape in [the] US…" She also states that she expects to progress in her career in the near term as a chief financial officer, either with her current employer or another company of a wide range of sizes, including a start-up or new company.

As noted above, in the first prong we focus on the specific endeavor proposed by a petitioner. Here, based upon our review of the record, we agree with the Director's conclusion that the Petitioner's work in financial management in the oil and gas industry is of substantial merit in the area of business.

Turning to national importance, we note that the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar,* 26 I&N Dec. at 889. Here, the Petitioner must demonstrate the national importance of her continuing to serve as a finance manager for an employer in the oil and gas industry, rather than the national importance of the industry overall. In *Dhanasar,* we noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

Here, the Director concluded that the Petitioner's proposed endeavor would not broadly impact her field, but would primarily impact her employer. On appeal, the Petitioner asserts that the Director failed to address the totality of the evidence regarding the potential impact of her work, which includes several reference letters. For example, [redacted] Vice President Finance [redacted] for [redacted] writes that the Petitioner possesses "superior understanding of the Shales business," and that her work in improving [redacted]'s business performance through providing advice to the company's senior leaders "has a direct benefit to the nation, considering that [redacted] employs around [redacted] people in the U.S. alone." Similarly, [redacted] Chief Financial Officer and Finance Director for [redacted] in Iraq, states in his letter that since the Petitioner's work directly impacts [redacted] financial health, it "also impacts the U.S. and global economy, given that [redacted]s a [redacted] company and employs [redacted] people globally." [redacted] Head of Enterprise Performance Management fo[redacted] in the Netherlands, also links the Petitioner's endeavor to the United States economy, stating tha[redacted]s shales business spans [redacted] and "involves a [redacted] capital spend per annum," and that the shale oil and gas sector "is helping transform the U.S. economy." And a former colleague of the Petitioner [redacted] of the [redacted] indicates that in her current position with [redacted] the Petitioner "help[s] unlock additional value to [redacted] which in turn strengthens the U.S. economy…"

However, as stressed by the Petitioner on appeal, her proposed endeavor is not tied to or dependent on a particular employer, as she has stated that she may pursue employment with a smaller or start-up

company. The record does not include evidence regarding the potential impact of her proposed work with such a company, whether in terms of job creation or other substantial economic impacts. More importantly, neither [redacted] letter nor other evidence in the record demonstrates that through her work in contributing to complex commercial transactions for her employer, the Petitioner will create more jobs for the overall gas and oil industry in the United States. The conclusory statement in his letter is not supported by documentary evidence in the record, which relates to increased jobs in the energy sector in general, and does not take into account the potential negative effect of such transactions on other companies in the United States oil and gas industry. Although the Petitioner asserts on appeal that these reference letters show the impact of her proposed endeavor as a finance manager beyond her current or future employer, they instead show the broader economic impact of [redacted] the shale oil and gas sector and the oil and gas industry as a whole.

The Petitioner also asserts that her proposed endeavor will benefit the environment of the United States. [redacted] states that the Petitioner's expertise in the shales business "positively impacts the U.S. environment" because "shale gas burns cleaner than other forms of energy," such as coal and oil. Although the record verifies that the Petitioner has expertise in the shales sector of the industry through her experience working for [redacted] the record does not support the statement that her work as a financial manager has, or more importantly will prospectively, result in benefits to the environment on anything more than a remote level. In addition, even if her proposed endeavor could be closely tied to the impact of the "shale revolution" in the United States, the Petitioner has not shown that this would be a benefit to the environment. Notably, what appears to be the abstract of a paper in the record titled "The Shale Gas Revolution: Developments and Changes" notes that there are environmental concerns relating to the extraction process and "a growing fear that shale gas may substitute not for coal as many originally hoped, but for renewables."

[redacted] letter, as well as others, also touts the benefits of the Petitioner's proposed endeavor to the national security of the United States, noting that production of shale oil and gas has led to the independence from foreign energy sources. Another letter from [redacted] executive, [redacted], generally describes the Petitioner's role in overseeing merger and acquisition transactions. He states that these are "between [redacted] dollars and involve complex negotiations," and that it is important in light of increasing energy demands that United States companies retain experts such as the Petitioner. While documentary evidence in the record supports the impact of shale oil and gas production on the United States' energy self-reliance, it does not support a close link between the Petitioner's proposed work on complex commercial transactions for her current or future employer and these benefits.

The Petitioner also highlights the impact of her proposed endeavor through her work with the Association of International Petroleum Negotiators (AIPN), and references a letter of support detailing her contributions to the oil and gas industry through this organization. However, a thorough search of the record did not uncover such a letter, and it is not specifically mentioned in any of the lists of evidence provided with the initial petition or the Petitioner's response to the Director's RFE. More importantly, we note that she does not mention this organization in her personal statement describing her proposed endeavor, nor is it mentioned in either of the resumes she submitted. Any of the Petitioner's past or proposed endeavors with AIPN are only mentioned in the briefs submitted by counsel, and the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

For all of the reasons discussed above, we conclude that the Petitioner has not shown that her proposed endeavor would be of national importance, and she therefore does not meet the first prong of the *Dhanasar* analysis.

B. Whether the Petitioner is Well Positioned to Advance Her Proposed Endeavor

We agree with the Director's conclusion that the Petitioner's education and experience in financial management, as well as her track record of success with her current employer, establish that she is well positioned to advance her proposed endeavor. She therefore meets the second prong of the *Dhanasar* framework.

III. CONCLUSION

The Petitioner has not met the first prong of the *Dhanasar* analytical framework. We therefore need not address whether she meets the third prone, as we conclude that she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.